(2)

86-1244

Supreme Court, U.S.
FILED
FEB 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STONEY GENE GOLDEN,

Petitioner,

vs.

CLARENCE W. DUPNIK, SHERIFF
of Pima County, Arizona,

Respondent,

and

THE STATE OF ARIZONA,

Real Party in Interest.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE ARIZONA SUPREME COURT

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

PAUL E. TANG*
Deputy County Attorney
177 North Church Avenue
Suite No. 300
Tucson, Arizona 85701
Tel: (602) 622-6621
Attorneys for Respondent
*Counsel of Record

105 pp

TABLE OF CONTENTS

OPINION BELOW. 2
JURISDICTION 2
QUESTION PRESENTED 8
STATEMENT OF THE CASE. 8
REASONS FOR DENYING THE WRIT 11
CONCLUSION 27
EXHIBIT "A". 1A
EXHIBIT "B". 10A
EXHIBIT "C". 12A

CITATIONS

CASES

Bassing v. Cady, ...11
208 U.S. 386, 28 S.Ct. 392,
52 L.Ed. 540 (1908)

Biddinger v. Commissioner, ...19
245 U.S. 128, 38 S.Ct. 41,
62 L.Ed. 193 (1917)

Bruzaus v. Matthews, ...13
207 F.2d. 25 (D.C. App. 1953)

Chapin v. Fye, ... 5
179 U.S. 127, 21 S.Ct. 71,
45 L.Ed. 119 (1900)

Commonwealth of Kentucky v. Dennison,. .19
65 U.S. 66, 16 L.Ed.
717 (1860)

Ex Parte McDonald. 15
631 SW 2d 222 (Tex. App. 1982)

Herndon v. Georgia,. 5
295 U.S. 441, 55 S.Ct. 794,
79 L.Ed 1530 (1935)

In Re Strauss, ...25
197 U.S. 324, 25 S.Ct.
535, 49 L.Ed 774 (1905)

Oxley Stave Company v. Butler County,. . 5
166 U.S. 648 (1897)

McDonald v. Burrows, ...14, 15
731 F.2d 294 (1984), cert denied
469 U.S. 852

Michigan v. Doran, . . 7, 8, 12, 13, 15, 16, 18, 22, 25, 27
439 U.S. 282, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978)
Pierce v. Creecy,. 20, 21, 22, 24
210 U.S. 387, 28 S.Ct. 714, 52 L.Ed 1113 (1907)
Rice v. Sioux City Cemetery, ...6
349 U.S. 70, 75 S.Ct. 614, 99 L.Ed 897 (1954)
Roberts v. Reilly, ... 19, 23
116 U.S. 80 (1885)
United States v. Calandra. 13
414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974).
United States v. Hess. 26
124 U.S. 483, 8 S.Ct. 571, 31 L.Ed 516 (1888)
Zambito v. Blair,. 12
610 F.2d 1192 (4th Cir. 1979), cert. denied 445 U.S. 928

STATUTES AND RULES

28 U.S.C. Rules of the Supreme Court, Rule 17. . . . . 3, 4
28 U.S.C. § 1257. 5
Tennessee Code Annotated, § 39-2602 26

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. _____

STONEY GENE GOLDEN,

Petitioner,

vs.

CLARENCE W. DUPNIK, SHERIFF
of Pima County, Arizona,

Respondent,

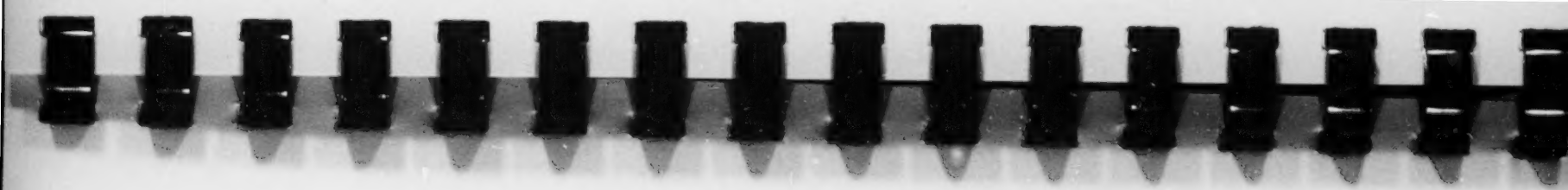
and

THE STATE OF ARIZONA,

Real Party in Interest.

OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI
FROM THE ARIZONA SUPREME COURT

The Pima County Attorney, on behalf of the State of Arizona, requests that this Court deny STONEY GENE GOLDEN'S



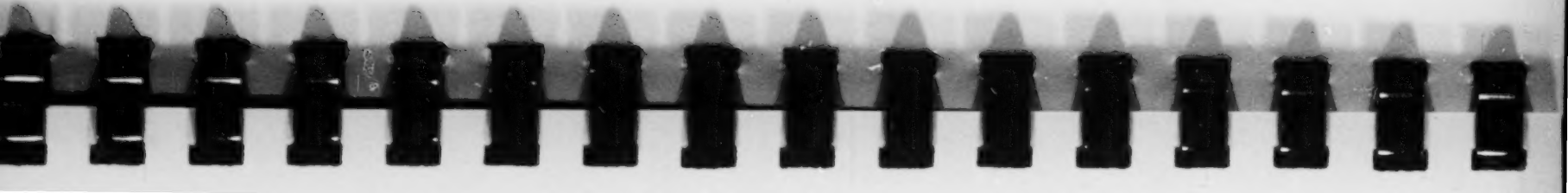
petition for a writ of certiorari reviewing the judgment of the Arizona Court of Appeals, Division 2, Department A, in this case.

Opinion Below

The opinion of the Arizona Court of Appeals, Division 2 is reported as Golden v. Dupnik and Arizona, ____ Ariz. ____, ___ P.2d ____ (CA-Civ. 5544 filed May 22, 1986). On July 2, 1986, the Court of Appeals for the State of Arizona, Division 2, Department A, denied Petitioner's Motion for Reconsideration. A Petition for Review, filed July 17, 1986, was denied by order of the Arizona Supreme Court on October 7, 1986.

Jurisdiction

The decision of Arizona Court of Appeals, Division 2, Department A, does not



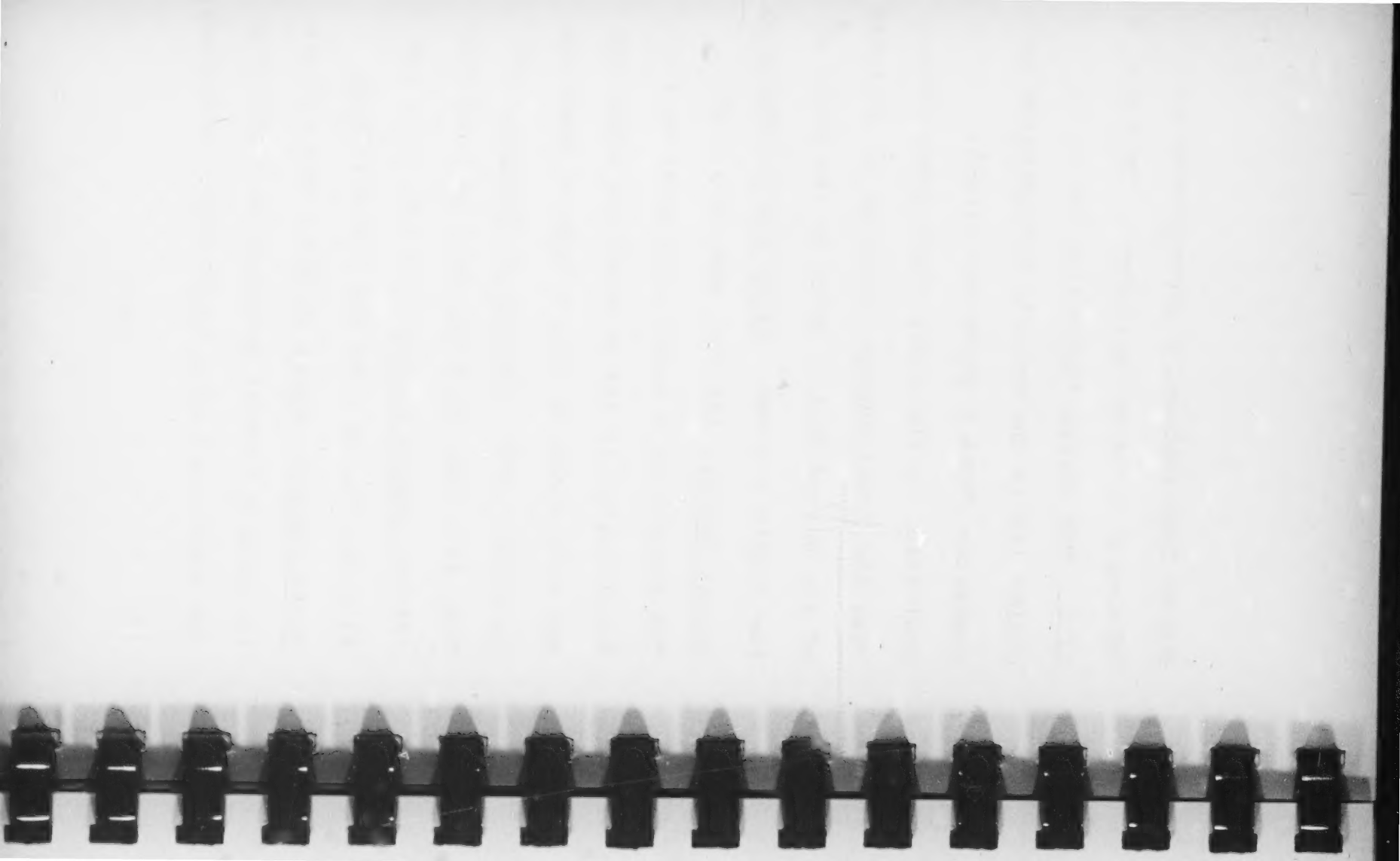
warrant review, and a grant of certiorari would constitute a deviation from the guidelines provided by 28 U.S.C., Rules of the Supreme Court, Rule: 17.1: "A review on a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore." Under Rule 17.1 (b) and (c) the following are considerations governing review on certiorari:

> "When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort..."
>
> When a state court...has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in such a way in conflict with the applicable decisions of this court."

The considerations enumerated in Rule 17.1 (b) and (c) are not encompassed in the decision of the Court of Appeals of the State of Arizona, Division 2, Department A, cited as 2 CA-Civ 5544 (filed May 22, 1986) since (1) no important question of federal law has been decided by the Arizona court, and (2) Arizona's ruling is in accord with this Court's decisions regarding the role of the asylum state in extradition proceedings.

There was no important federal question put before the Arizona court that induced the court to decide a federal issue. The Arizona court merely determined that the issues raised by the Petitioner were beyond the scope of the inquiry permitted under the laws of extradition. The Petitioner failed to "specially set up or claim" any protection under the United

States Constitution, a prerequisite to raising a claim on certiorari. 28 U.S.C. § 1257. The phrase "specially set up or claim" limits the Court's jurisdiction to instances where a party has clearly indicated, in the state court proceeding, that the Constitution, treatise or statutes of the United States serve as the basis of the rights claimed. Oxley Stave Company v. Butler County, 166 U.S. 648, 655 (1897). The Petitioner's vague references to the Constitution in the proceedings below are not sufficient to draw a federal question in issue. See: Herndon v. Georgia, 295 U.S. 441, 442, 55 S.Ct. 791, 79 L.Ed 1530 (1935); Chapin v. Fye, 179 U.S. 127, 129, 21 S.Ct. 71, 45 L.Ed 119 (1900); Oxley Stave Company, supra at 655. The failure to raise a federal question in a petition for certiorari is a fatal flaw. Therefore,



the Petitioner's request for certiorari should be denied.

Assuming arguendo that the Petitioner's references to his rights under the Constitution are sufficient to present a federal question, no "special or important reasons" are presented that would warrant the exercise of the Court's discretion. "Special and important reasons imply a reach to a problem beyond the academic or episodic." Rice v. Sioux City Cemetery, 349 U.S. 70, 74, 75 S.Ct. 614, 99 L.Ed 897 (1954). The question cannot be limited to the interest of the particular litigants. Id. In this case, the Petitioner is merely requesting the Court to rule on the validity of his divorce decree, as it serves for the basis of the custody violation charged in the indictment. This question does not reach

Constitutional dimensions, but simply asks the Court to act as a fact-finder in this particular instance. No court has ruled on the validity of the divorce decree. The validity of the decree is collateral to the sufficiency of the indictment pursuant to the laws of extradition. It would be improper for the Court to take jurisdiction in this case when the sole issue presented is the Petitioner's attempt to controvert the criminality of the offense charged by collaterally attacking his divorce decree.

Certiorari should also be denied since the Arizona decision is not in conflict with the renderings of other states or of this Court. The opinion, as authored by the Honorable James D. Hathaway, relies on this Court's decision in Michigan v. Doran, 439 U.S. 282, 99 S.Ct. 530, 58 1.Ed.2d 521 (1978). The

decision follows the dictates of this Court as enumerated in that opinion. In Doran the Court defined the latitude afforded the asylum state in assessing the propriety of the extradition papers from the demanding state. Therefore, the issues raised by the Petitioner have been settled by the Court and need not be readdressed.

QUESTION PRESENTED

1. Considering the limited scope of inquiry afforded asylum states in extradition proceedings, can the Courts of Arizona inquire into the validity of the Petitioner's Tennessee divorce decree to determine if there was a factual basis for the issuance of the indictment?

STATEMENT OF THE CASE

The statement of facts as set forth by the Arizona Court of Appeals in Golden v. Dupnik and State, 2-CA-Civ. 5544, p. 1-3 (filed May 22, 1986) is accurate. The facts set forth in the Petition for

Certiorari, however, are inaccurate in the following respects: Petitioner omits any mention in his statement of the case that he was indicted by a Tennessee Grand Jury on a charge of child abduction on May 3, 1983. (See Exhibit "A".) Despite the alleged improprieties contained in the warrant issued by Judge Floyd Don Davis, who previously represented Petitioner's ex-wife in 1981 and 1982 in two divorce actions against the Petitioner, the indictment, and not the warrant served as the foundation for the extradition papers demanding Petitioner's return to Tennessee.

Petitioner claims that the Franklin County, Tennessee Chancery Court did not have jurisdiction under its own laws to grant the divorce between himself and Candi Golden, his ex-wife. However, although in this case not a part of the record, in his

divorce action the Petitioner filed pleadings which admitted the Golden's were residents of Tennessee, and that he and his wife were residing in Florida only temporarily. The Petitioner's answer and counter complaint for his divorce action states as follows:

> "2. Defendant admits that the parties were married in Coffee County, Tennessee on September 12, 1979, and that they are residents of the State of Tennessee. Defendant and plaintiff were temporarily residing in Panama City, Florida..." (Emphasis added.) (See Answer and Counter-complaint in Golden v. Golden, No. 10029, Chancery Court of Franklin County, Tennessee, attached as Exhibit "B".)

Thus, by his own admission, Petitioner affirmatively pleaded his residency in the State of Tennessee and admitted that his stay in Florida was only temporary.

Finally, it is critical to note that in this case the Petitioner before the trial court stipulated that the Governor's papers of the States of Arizona and Tennessee were in order. (Transcript of proceedings (TP) 8/30/85 pp. 26A, 27A, 60A, 61A and 63A attached as Exhibit "C".)

REASONS FOR DENYING THE WRIT

1. The indictment returned by a Grand Jury serves as the basis for this extradition; therefore, the impropriety that may be attached to the procurement of the arrest warrant need not be addressed in the extradition proceeding.

Once a governor of an asylum state grants extradition, that grant is prima facie evidence that the constitutional and statutory requirements have been met by the demanding state. Bassing v. Cady, 208 U.S. 386, 28 S.Ct. 392, 52 L.Ed 540 (1908). In

Michigan v. Doran, supra, the Court defined the limits of judicial inquiry after extradition has been ordered. The asylum court is only permitted to consider whether (a) the extradition documents on their face are in order; (b) the petitioner has been charged with a crime in the demanding state; (c) the petitioner is the person named in the extradition, and (d) the petitioner is a fugitive. Id. at 289. The Petitioner admitted and stipulated to all of these factors at the trial level. (TP 8/30/85 attached as Exhibit "C".) In addition to these considerations, the court may also inquire into whether a neutral magistrate issued the original arrest warrant. Id. Zambito v. Blair, 610 F.2d 1192 (4th Cir. 1979).

In the instant case, although there are substantial questions as to the

neutrality of the magistrate who issued the arrest warrant, the arrest warrant does not serve as the basis for the extradition proceedings. The Petitioner was indicted by a Tennessee Grand Jury on May 3, 1983. (See Exhibit "A"). Since 18 U.S.C. § 3182 and its Arizona counterpart A.R.S. § 13-3843 (b) require a warrant by affidavit sworn before a neutral magistrate or an indictment by grand jury, the arrest warrant is incidental to the extradition. Bruzaus v. Matthews, 207 F.2d 25 (D.C. App. 1953). The grand jury made a finding of probable cause that cannot be reviewed by the court. U.S. v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974). In Michigan v. Doran, supra at 290, the Court stated:

> "We hold that once the governor of the asylum state has acted on the requisition for

> extradition based on the demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue by the asylum state."

The extradition papers were approved by the governor, and the Petitioner has not presented any challenge to rebut the prima facie evidence that these papers were in order.

> 2. When issuing a warrant for extradition, the motives of the prosecutor in the demanding state may not be considered.

It is improper for the Governor of Arizona or its courts to scrutinize the motives of the prosecutor in Tennessee. McDonald v. Burrows, 731 F.2d. 294, 296, cert denied, 469 U.S. 852 (1984). Although there have been cases that have permitted such an inquiry, these holdings were prior to the establishment of the limits of

judicial inquiry developed in Michigan v. Doran, supra. Since the motives of the prosecutor are not listed as an acceptable avenue of inquiry in the Michigan v. Doran decision, courts have held that, by omission, the motives of the prosecutor are not open to the scrutiny of the asylum state. McDonald v. Burrows, supra; Ex Parte McDonald, 631 S.W.2d 222 (Tex. App. 1982). To permit such an inquiry would substantially alter the judicial effectiveness of extradition proceedings in requiring courts of asylum state to make impermissible non-ministerial examinations into the jurisprudence of demanding states.

3. The validity of the Petitioner's divorce decree is collateral to the extradition proceedings and beyond the scope of inquiry for the Arizona courts.

The Petitioner claims that the

Tennessee court lacked jurisdiction to issue his divorce decree, stating he and his wife were residents of Florida at the time of filing. Although not a part of the record,[1] the Petitioner filed pleadings in his divorce action in which he admitted he was a resident of Tennessee, and that he and his wife were residing in Florida only temporarily. The Petitioner now suggests that the indictment presented to the

. . . .

---

[1] The State of Arizona did not offer Answer and Counter-complaint in Golden vs. Golden, No. 10,029, Chancery Court of Franklin County, Tennessee, currently marked as Exhibit "B", into evidence in the lower court proceedings since the information contained therein was irrelevant to the permissible avenue of inquiry for the asylum state as established in Michigan v. Doran, supra.

Governor of Arizona fails to substantially charge a crime since no valid custody order existed at the time the Petitioner took his son. Without regard to the merits of the Petitioner's jurisdictional claim, this collateral attack on the divorce decree is not within the scope of inquiry afforded the Arizona courts for the purpose of the extradition proceedings.

The Tennessee indictment states:

> "Stoney Gene Golden heretofore, to-wit, on the 2nd day of January, 1983, and before the finding of this indictment in the County aforesaid did unlawfully, feloniously take away Chasey Gene Golden, a child three years of age, with intent to detain and conceal such child from its mother, Candi Taylor Reeves, being the person having lawful custody of said child, all in violation of TCA 39-2602." (See: Exhibit "A".)

The allegation that Candi Taylor Reeves,

Petitioner's ex-wife, had lawful custody of Chasey Golden at the time the Petitioner removed the boy from the state is a question of fact relating to the validity of the divorce decree. If the Petitioner is correct, and Tennessee had no jurisdiction to issue the divorce decree, then he has an adequate defense to present to the courts of the State of Tennessee. The integrity of the divorce decree is not a question of law affecting the sufficiency of the indictment as a charging document and cannot be considered by Arizona courts as a basis for denying the demand for extradition.

In Michigan v. Doran, supra, the Court enumerated the judicial limits of inquiry permitted by the asylum state. These permissible avenues of inquiry are well-established in the history of the laws

of extradition. Roberts v. Reilly, 116 U.S 80 (1885); Commonwealth of Kentucky v. Dennison, 65 U.S. 66, 16 1.Ed 717 (1860). The purpose of extradition laws are to assure that a fugitive from justice will be promptly returned to the demanding state to face charges. Biddinger v. Commissioner, 245 U.S. 128, 132-133, 38 S.Ct. 41, 62 L.Ed 193 (1917). The role of the governor of the asylum state is purely ministerial in nature. Commonwealth of Kentucky v. Dennison, supra at 107. To allow the Governor of Arizona or the Arizona courts to rule on the validity of the Petitioner's divorce decree as issued by the State of Tennessee could involve the asylum state in a factual examination of such proportions that the purpose of the extradition provision would be thwarted.

In recognition of the purpose of

extradition laws, the Court has limited the attack on an indictment to a demonstration that the document does not substantially charge a crime. Pierce v. Creecy, 210 U.S. 387, 401, 28 S.Ct. 714, 52 1.Ed 1113 (1907). In Pierce, the Court drew a distinction between attacking the indictment as a pleading, an improper challenge in an extradition proceeding, and attacking the indictment by showing it does not charge a crime. In order to meet the requirements of the latter, "there must be objections which reach deeper into the indictment than those that would be good against it in the court where it is pending." Id. The Court stated:

> "The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the

> fugitive has been in fact, however inartificially (sic) charged with a crime in the state from which he has fled." Id.

The Court continues:

> "...For if all the criticisms of the indictment should be approved, and they leave untouched in the pleading enough to show that the petitioner was charged with a crime in the broad and practical sense in which those words ought to be understood, the condition prescribed by the Constitution has been performed." Id.

The facts of Pierce are analogous to the case at bar. Pierce was charged with false swearing. An element of the crime of false swearing was that the document purported to be false must have been made voluntarily and not within the course of a judicial proceeding. At his extradition proceeding, Pierce claimed the document was made during a judicial proceeding. Therefore, the

indictment did not substantially charge a crime. Pierce also claimed that his statements in the document were opinion, not facts as required by the statute charged. The Court held that it could not inquire into the fugitive's allegations since they presented mixed questions of law and fact. Id. at 403. Just as it is improper for the Court in Pierce to determine whether the document in question was sworn out in the course of a judicial proceeding, the Arizona court is unauthorized to consider whether the Petitioner took his son in violation of a lawful custody order. Such a determination would require Arizona to conduct an investigation into matters collateral to the extradition proceedings beyond the limits authorized by the Court in Michigan v. Doran, supra.

This Court has consistently declined to consider collateral issues similar to the one presented by the Petitioner as grounds for attacking the indictment in the extradition stage. In Roberts v. Reilly, supra, Roberts claimed that a larceny indictment was invalid because the company alleged to be the owner of the property which served as the element of the charge was incapable at law of such ownership. The Court stated that this issue "...is not a matter of law arising upon the face of the indictment, but can arise only at the trial upon the evidence, if the question should be made. The averment in the indictment is the allegation of fact which does not seem to be impossible in law, and is, therefore, traversable." Id. at 96.

Here, Petitioner is simply raising questions of fact, not scrutinizing the

validity of the indictment on its face. The courts of Arizona are not authorized to act as fact finders in extradition proceedings and cannot rule on the validity of the Petitioner's Tennessee divorce decree. The fact that Petitioner admitted that he was a resident of Tennessee at the time of filing is illustrative of the necessity of fact finding on this issue. Arizona does not have the jurisdiction to make this determination. It is a question of fact and law for the courts of Tennessee. Such a claim does not negate the sufficiency of the indictment as a charging document. All that is required "is that the indictment, whether good or bad as a pleading, describes every element of the crime charged." Pierce v. Creecy, supra at 404. This is the extent to which the courts of Arizona can scrutinize the

integrity of the indictment.

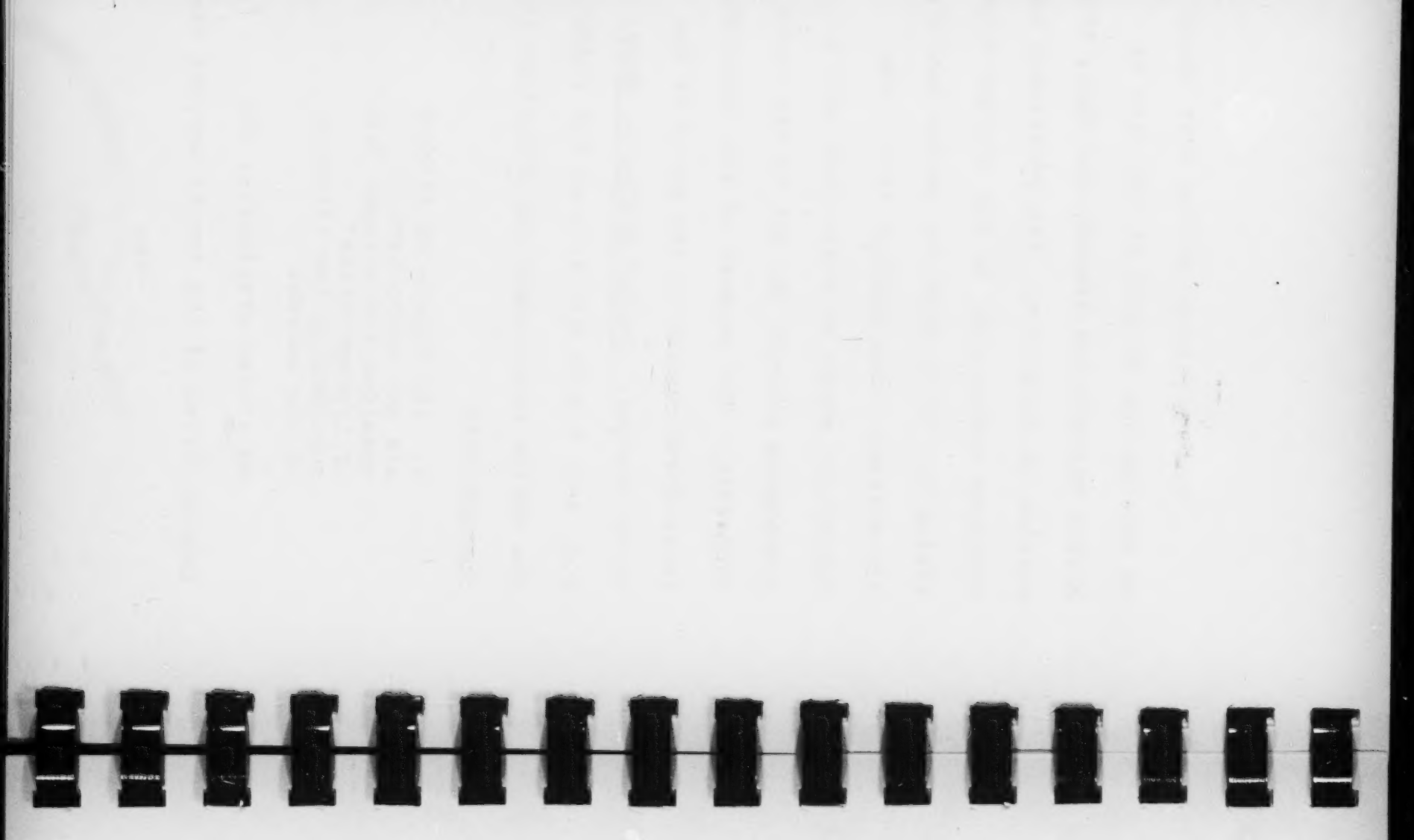
When viewed in this light, it is evident that the Petitioner's argument presented to this Court is merely that he is not guilty of the crime charged in the indictment since supposedly no valid custody order existed at the time he took his son. The Petitioner is not entitled to a determination of guilt or innocence in an extradition proceeding. Michigan v. Doran, supra at 288; In Re Strauss, 197 U.S. 324, 125 S.Ct. 535, 49 L.Ed 774 (1905). The Petitioner has not succeeded in attacking the indictment on the basis that it does not adequately charge a crime. Therefore, he should be required to state his defense to the courts of the State of Tennessee.

4. The documents in support of the Governor's Warrant provided the Petitioner with adequate notice of the charges against him.

The Petitioner claims that there was no section TCA 39-2602 at the time of arrest warrant was issued; and thus, the warrant is defective. The Petitioner had adequate notice that he was charged with taking his child from the lawful custody of his mother. (See Exhibit "A"). The Petitioner makes no claim that such a kidnapping statute was not on the books in Tennessee. The purpose of the indictment is to serve notice to the party of the crime charged. United States v. Hess, 124 U.S. 483, 8 S.Ct 571 31 L.Ed 516 (1888). The notice requirement was satisfied in the instant case.

5. The Courts of Arizona are not authorized to consider the alleged "web of improprieties" surrounding the issuance of the warrant.

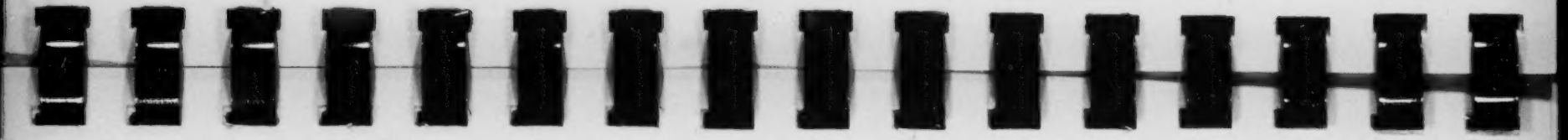
As stated previously, the improprieties of the arrest warrant are



incidental to this proceeding due to the issuance of the indictment on May 3, 1983. Arizona is not the proper forum to litigate the allegations of impropriety raised by the Petitioner. The dictates of Michigan v. Doran, supra, define the permissible scope of inquiry for the asylum state in extradition proceedings. The review of the Arizona courts is strictly limited by this decision and the claims of Petitioner fall outside the proper boundaries. The Petitioner should be required to initiate his claims in the State of Tennessee, where all the parties may be heard, all the pertinent testimony will be readily available, and where the court has jurisdiction to grant relief to the Petitioner if necessary.

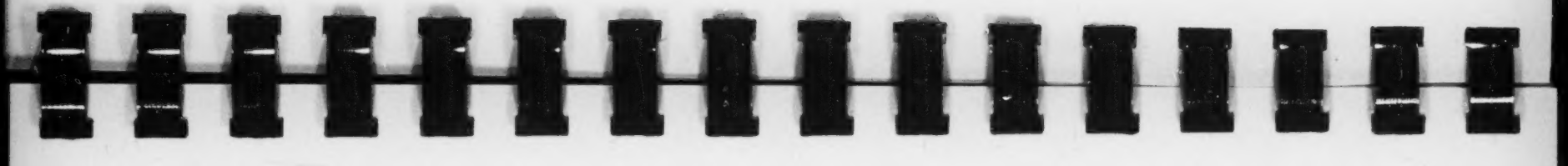
Conclusion

Since the Petitioner failed to



adequately raise a federal question in state court, and since Arizona is not the proper forum for consideration of the Petitioner's claims, the State of Arizona respectfully requests this Court to deny the Petition for Certiorari.

The Tennessee arrest warrant is an irrelevant consideration to Petitioner's extradition as a valid grand jury indictment exists and serves as the basis for Tennessee's request to extradite Petitioner. Petitioner's remaining claims do not challenge the sufficiency of the indictment but instead, address aspects relating to guilt or innocence. Petitioner's challenges should therefore be raised in the courts of the demanding state, Tennessee, rather than in the courts of Arizona as the asylum state's courts are limited to performing only ministerial



duties in extradition proceedings. The State of Arizona thus requests this court to deny GOLDEN'S petition for writ of certiorari.

Respectfully submitted this 5th day of February, 1987.

Paul E. Tang
Deputy County Attorney
177 N. Church Ave., Suite 300
Tucson, Arizona 85701
Tel: (602) 622-6621
Attorneys for Respondent
*Counsel for Record

STATE OF TENNESSEE CIRCUIT COURT

FRANKLIN COUNTY MAY Term 1983

The Grand Jurors for the State of Tennessee, duly elected, impaneled, sworn, and charged to inquire in and for the body of the County and State aforesaid, upon their oaths present: That STONEY GENE GOLDEN heretofore, to-wit, on the 2nd day of January, 1983, and before the finding of this indictment in the County aforesaid did unlawfully, feloniously take away Chasey Gene Golden, a child three years of age, with intent to detain and conceal such child from its mother, Candi Taylor Reeves, being the person having lawful custody of said child, all in violation of TCA 39-2602 against the peace and dignity of the State.

/s/
J. William Pope
Attorney General

Exhibit "A"

TO HIS EXCELLENCY, THE GOVERNOR

OF THE STATE OF TENNESSEE

I have the honor to request that you issue a requisition to the Governor of the State of Arizona for the apprehension and rendition of fugitive, Stoney Gene Golden. Said fugitive stands indicted for the offense of Child Abduction in violation of T.C.A. 39-2602 by the Grand Jury of Franklin County, said offense committed while present in Franklin County, Tennessee in January, 1983, as will more fully appear by reference to the certified copies of the Indictment attached hereto and made a part of this petition.

Since the commission of the offense, the fugitive has fled from the jurisdiction of the State of Tennessee with a view toward avoiding prosecution and is now, as your petitioner believes in the custody of the Pima County Sheriff's Department,

Tucson, Arizona 85700, which information was received by Sheriff Mike Kirk of Franklin County, Winchester, Tennessee from Mary Mandez, Pima County Sheriff's Dept., Warrant Division, P. O. Box 190, Tucson, Arizona 85700.

In my opinion the facts stated in this application are true, and I believe that the prosecution of said fugitive will result in a conviction of the crime charged. I nominate Mike Kirk, Sheriff of Franklin County, Winchester, Tennessee 37398, who has no private interest in the proposed arrest, as a proper person to be appointed and commissioned by you as the Agent of The State of Tennessee to receive said fugitive when apprehended, and bring said fugitive to this State. A guard is requested.

I hereby certify that in my opinion the ends of justice require the arrest and

return of said fugitive to Tennessee and that extradition is not sought for the purpose of collecting a debt, or enforcing civil remedy, or to answer any private end whatever.

I, J. William Pope, Jr., being duly sworn on my oath say that the facts stated in the foregoing application are true to the best of my knowledge and belief.

/s/
J. WILLIAM POPE, JR.
DISTRICT ATTORNEY GENERAL
12th JUDICIAL DISTRICT
STATE OF TENNESSEE

Signed and sworn to before me this ____ day of _____, 1987.

/s/
W. B. BOSWELL
CIRCUIT COURT CLERK
FRANKLIN COUNTY

TENNESSEE
EXECUTIVE CHAMBER

To His Excellency, the Governor of Arizona

Whereas, it appears by the annexed application and copies of indictment

which I certify are authentic and duly authenticated in accordance with the laws of the State of Tennessee, that under the laws of this State Stoney Gene Golden

stands charged with the crime of child abduction

committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime and thereafter fled from the justice of this State, and has taken refuge and is now to be found in the State of Arizona.

Now, Therefore, pursuant to the provisions of the Constitution and the laws of the United States and the laws of the State of Tennessee and the laws of the State of Arizona, in such case made and provided,

I Do Hereby Respectfully Demand that said Stoney Gene Golden fugitive from justice be arrested and secured and delivered to Sheriff Mike Kirk and a guard who ~~is~~ (are) hereby authorized to receive and convey and transport said fugitive to this State, here to be dealt with according to law.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, at the State Capitol in Nashville, on this 28th day of June A.D. 19 85

Lamar Alexander
GOVERNOR

Gentry Crowell
SECRETARY OF STATE

TENNESSEE
EXECUTIVE CHAMBER

To all to whom these presents shall come—Greeting:

Whereas, it has been made to appear that Stoney Gene Golden

(hereinafter referred to as fugitive) of our County of Franklin stands charged with the crime of child abduction

And it has been represented that said fugitive fled from justice of this State and has taken refuge within the State of Arizona,

And Whereas, Pursuant to the provisions of the Constitution of the United States, and an Act of Congress, passed the twelfth day of February, One Thousand Seven Hundred and Ninety-three, application has been duly made to his Excellency Governor of Arizona for the delivery of said fugitive from justice.

Now, Therefore, in pursuance of the power vested in me by law, I have appointed and by these presents do appoint and commission Sheriff Mike Kirk and a guard Agent(s on the part of this State, for the purpose of bringing the said fugitive into this State having jurisdiction of the crime aforesaid, whenever the Governor of the said State of Arizona shall cause said fugitive to be delivered up agreeably to the requisition aforesaid.

These Are, Therefore, To request and require all persons to permit the said Sheriff Mike Kirk and a guard to receive and secure the said Stoney Gene Golden and bring the fugitive unmolested into this State, having jurisdiction of said crime-th Agent(s) peacefully and lawfully behaving.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, at the State Capitol in Nashville, on this 28th day of June A.D. 19 85

Lamar Alexander
GOVERNOR

Gentry Crowell
SECRETARY OF STATE

AC

IN THE CHANCERY COURT

OF FRANKLIN COUNTY, TENNESSEE

CANDI SHERRI TAYLOR GOLDEN)

vs.)

STONEY GENE GOLDEN) NO. 10,029

_____)

Received From

Chancellor
Filed and Enrolled

Sept. 29
Dorothy Hunter
Clerk & Master

DECREE

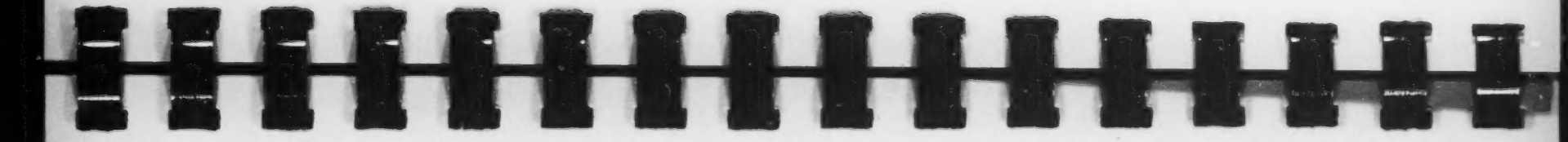
This cause came on to be heard on this 20th day of August, 1982, before the Honorable Tyrus H. Cobb, Chancellor, sitting by interchange with the Honorable L. F. Stewart, Chancellor, upon the complaint filed by the plaintiff, Candi Sherri Taylor Golden, the answer and cross-complaint filed by the defendant, Stoney Gene Golden, the answer filed

thereto by plaintiff, the oral testimony of witnesses who appeared and were examined in open court and upon the entire record filed in this cause.

And it satisfactorily appearing to the Court from the proof that the allegations contained in the complaint of plaintiff are true and amply sustained by the proof and that the plaintiff is entitled to an absolute divorce from the defendant in that the defendant has been guilty of such cruel and inhuman treatment and conduct toward plaintiff as renders cohabitation unsafe and improper, or for her to be under his dominion and control:

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the bonds of matrimony heretofore subsisting between plaintiff and defendant be and they are hereby absolutely and forever dissolved.

It is further ORDERED that the



counter of cross-complaint of the defendant, Stoney Gene Golden, is without merit and is herby dismissed.

It further appearing to the Court from the proof that the plaintiff is a woman of good moral character, is worthy and should be awarded the custody of the child, it is, accordingly, ORDERED, ADJUDGED AND DECREED that the custody of Chasity Golden, be and it is hereby decreed to plaintiff, but the defendant may see and visit with said child every other week from 10:00 A.M. on Saturday morning to 5:00 P.M. o'clock on Sunday afternoon. The plaintiff will deliver the child to the front of the Chuckwagon Cafe at 10:00 A.M. on every other Saturday morning and the defendant will return said child to the Chuckwagon Cafe on the square in Winchester at 5:00 P.M. on Sunday. Both parties are expressly enjoined from removing the child from the

jurisdiction of this Court.

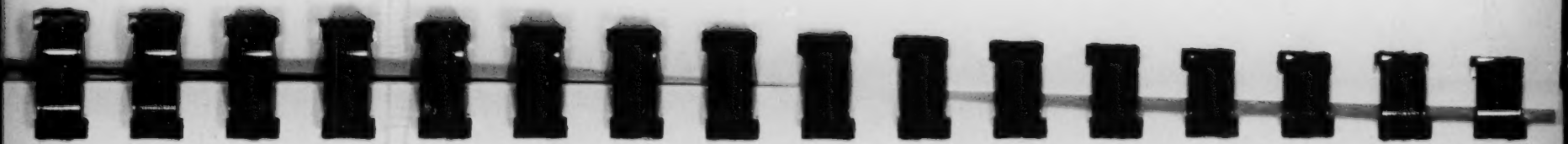
It is further ORDERED that defendant shall pay directly to the plaintiff the sum of $20.00 per week for the support of said child.

A judgment in the amount of $198.00 is rendered against the defendant in favor of the plaintiff, which represents one-half (1/2) of the joint income tax refund of the parties and execution may issue for the collection of same, if necessary.

The costs of the cause are adjudged against the defendant, for which execution may issue if necessary.

This cause is retained in Court pursuant to statute and either party may apply for the enforcement and/or modification of this decree whenever necessary.

/s/
Tyrus H. Cobb
Chancellor



APPROVED FOR ENTRY:

/s/
Joe S. Bean
Attorney for Plaintiff

/s/
Jerre M. Hood
Attorney for Defendant

IN THE CHANCERY COURT OF

FRANKLIN COUNTY, TENNESSEE

CANDIE SHERRI TAYLOR GOLDEN,)

Plaintiff,)

vs.)

STONEY GENE GOLDEN,) NO. 10,029

Defendant.)

)

FILED IN OFFICE

July 6, 1982
Time 2:15 P.M.

Dorothy Hunter
Clerk and Master
Franklin County, Tenn.

ANSWER AND COUNTER-COMPLAINT

Comes now the defendant, Stoney Gene Golden for his answer to the complaint for divorce filed herein against him would state as follows:

1. Defendant admits the statistical information as contained in paragraph 1 of the complaint except defendant avers that

Exhibit "B"

the date of separation as being May 22, 1982.

2. Defendant admits that the parties were married in Coffee County, Tennessee on September 12, 1979 and that they are residents of the State of Tennessee. Defendant and plaintiff were temporarily residing in Panama City, Florida when plaintiff abruptly left the defendant without just cause or provocation. Defendant denies that plaintiff has any grounds for divorce. Defendant admits that one (1) child, Chasity Golden, age 2 years old, has resulted from this marriage.

. . .

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA IN AND
FOR THE COUNTY OF PIMA

STONEY GENE GOLDEN, Petitioner, vs. CLARENCE W. DUPNIK, Sheriff of Pima County, Arizona, Respondent, and The State of Arizona, Real Party In Interest	)	No. H-1020

TRANSCRIPT OF PROCEEDINGS
Petition for Writ of Habeas Corpus
August 30, 1985

THE HON. THOMAS MEEHAN, Judge
Division 16

APPEARANCES:

PAUL TANG, Deputy County Attorney

LORI A. PETERSON, Assistant Public Defender

and Kathleen McCarthy, Esq.

Kathryn S. Anderson, RPR
Official Court Reporter

Exhibit "C"

INDEX

STONEY GOLDEN

Direct Examination by Ms. Peterson 18A
Cross Examination by Mr. Tang 37A

CINDY H. GOLDEN

Direct Examination of Ms. Peterson 39A

DEBRA EDLER

Direct Examination by Ms. McCarthy 46A

RICKY MACEY

Direct Examination by Mr. Tang 57A
Cross-Examination by Ms. Peterson 61A

* * * * *

August 30, 1985

Tucson, Arizona

PROCEEDINGS

THE COURT: Stoney Gene Golden versus Clarence Dupnik, State of Arizona, petitioner's application for writ of application H-1020.

Lori Peterson for the petitioner, Paul Tang for the respondents.

You want to go ahead, Lori?

MS. PETERSON: Okay. Judge, I'm willing to proceed however you would like me to on this. If you'd like me just to offer my testimony further or whether you'd like me to make an opening -- if you have a general ideal what we're trying to do, I won't bother with an opening.

THE COURT: I've read the file.

MS. PETERSON: Okay. I'll call my

first witness, Stoney Golden.

MR. Tang: Invoke the Rule at this time as to any other witnesses.

Your Honor, also like to raise a motion in limine at this time as well. Your Honor, as we know, as you've read through the pleadings, there's been allegations made in this writ of habeas corpus. My motion in limine basically is that this Court has jurisdiction to hear only some certain issues, and those issues are whether or not this is Stoney Golden, whether or not he's the individual charged with the crime of kidnapping and whether or not the documentation in this case is proper. Any other issues are irrelevant and immaterial to the proceedings at hand as well as out of this Court's jurisdiction.

For that reason I would urge the Court to grant the motion in limine to

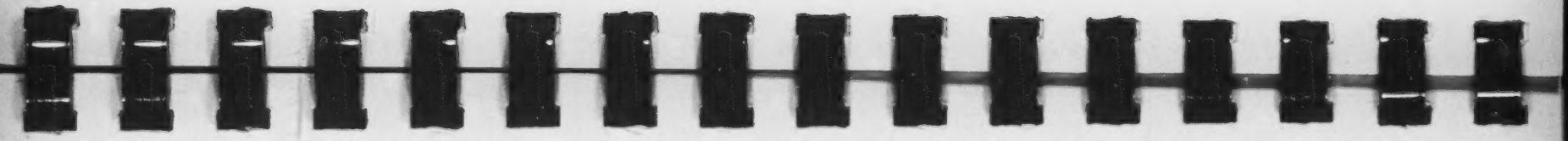
order all the witnesses, whoever they may be, other than those issues that are before the Court pursuant to ACC 13-3845, as well as the case law that stands, to preclude any other testimony.

THE COURT: I don't know what Lori's going to do, I really don't, so. . .

MRS. PETERSON: Okay, Judge. What I would like to do first of all is supply some evidence about the situation back in Tennessee.

Now a great deal of what I have to introduce does have to do with the three things that Mr. Tang just mentioned.

I also know -- would like just for the Court to be aware of the situation back there very briefly so that if you feel that you must rule against us on the merits, that you have some idea of the situation so that we can receive a stay from you so that



we can file a notice of appeal. I think it would be very helpful to the Court to have a very brief understanding of the situation in Tennessee. And --

THE COURT: Lori, you set it out pretty well in your memorandum and to be --

MR. PETERSON: That's true, Judge. And like I say, I intend to keep it quite brief.

THE COURT: Go ahead if you want to do it.

MS. PETERSON: Call Stoney Golden to the stand.

THE COURT: All right, Mr. Golden, come up and be sworn please.

MS. PETERSON: Also like to announce the appearance of Kathleen McCarthy also at the table.

MS. McCARTHY: I'm the attorney in the domestic case. I'm helping out with

this.

(Witness duly sworn.)

STONEY GENE GOLDEN

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PETERSON:

Q Stoney, please state your entire name for the record.

A Stoney Gene Golden.

Q How old are you?

A Twenty-three.

Q How long have you lived in Arizona?

A Approximately two years.

Q Stoney, were you arrested in May of this year?

A Yes, I was.

Q Could you tell us what the

charges were?

A The charges were fugitive kidnapping.

Q Okay. Who were you alleged to have kidnapped?

A My son Chasey Golden.

Q I would like to just refer you back to a few years ago, the situation in Tennessee; were you married in 1980 and 1981?

A Yes, ma'am, I was.

Q Okay. Who were you married to?

A Candie Taylor.

Q Did you have a child with her?

A Yes, I did, Chasey Golden.

Q Did you live in Tennessee during the first few years of your marriage?

A Yes, I lived in Tennessee up until 1981.

Q Okay. Did you ever move away

from Tennessee?

A Yes, I did.

Q Okay. Could you tell the Court when you moved and why?

A I moved in 1981 to the State of Florida. And the reasons for my move was extended violence from -- basically and mostly from my wife's stepfather, Lonnie Taylor.

At the time that I moved in 1981 to Florida, her stepfather had pulled a gun and tried to shoot me.

A few months later she filed for divorce; went on for a month or so; she dropped it before it got to court.

MR. TANG: I object, your Honor, narrative here.

THE COURT: Paul, I'd like to get done. I've got a jury coming back in 10 minutes.

Go ahead.

BY MS. PETERSON:

Q Go ahead, sir.

A And after she dropped -- dismissed the pleadings for divorce, I then moved to Florida because of the violence.

This wasn't the only incident that something had occurred.

Q Okay. Did your wife move with you to Florida?

A Yes, she did.

Q Okay. Did the child move with you?

A Yes, he did.

Q When you got there, did you get a job?

A Yes, my wife and I both had employment in Florida for the year we were there.

Q Did you intend to remain in

Florida?

A Yes, I did. We moved everything that we had. We sold everything that we had in the State of Tennessee and took all the capital and everything and got us a place to stay in Florida and we were living and working there. I had nothing left in Tennessee.

Q Okay. Did any other members of your family move to Florida also?

A Yes. My brother Rocky moved to Florida at approximately the same time that I did. And later on my mother and father and my other brother had moved our family business to Florida.

Q All right. Did something happen that caused you to move back to Tennessee after having lived in Florida?

A Yes. I had gone to work one night. Earlier in the evening my mother

and father had planned a trip to go back to Tennessee to tie up some loose ends, business deals, they had a home for sale. And my wife and I were both working at the time.

And we agreed that it would be better to let my little boy go with them over the two-day period they were going to be gone because we were working anyway. And I was having to work in the jewelry store and a job at night also. So we both agreed that, you know, the child could go with them.

And they left about 5:00 that evening. And I went to work at about 11:00 that night, worked 11 to 7 shift.

When I returned the next morning home, I discovered that my wife was gone. And about an hour or two later my mother and father came back to Florida and they

told me that they had stopped over in Montgomery, Alabama to spend the night at a motel. And when they did, two cars came up, my wife and her stepfather and her mother, and they took my little boy and went down to Tennessee.

I called my attorney -- which the attorney that had represented me in the first two proceedings, that morning when I found out what had happened -- Joe Bean, and I asked him if he could find out if she was there with my little boy and if she had filed for divorce again.

And he told me to call him back in about an hour, which I did. At that time he told me yes, she had filed.

And I asked him: Well, did she file with Floyd Davis, you know, the attorney she had used before?

And he said: No, she didn't.

I said: Well, do you know who she did file with?

He said: Well, I filed it for her.

And I asked --

Q This is the man who used to be your attorney on the prior divorce action?

A Yes, he represented me in the same case. And I asked him what I was supposed to do. And he said he suggested I find myself a good attorney.

Q Okay. How long after your wife returned to Tennessee did she file for divorce?

A She was there a matter of hours. She filed it in the morning.

Q Okay. And this is while you were residents of Florida?

A Yes, ma'am.

Q You mentioned Floyd Davis; could you tell me what relationship he had

had with your wife before?

A Well, Floyd Davis had represented my wife in the first two filings for divorce, which she dismissed before they ever got to the court hearing. And he was her attorney in both cases.

MRS. PETERSON: And, Judge, at this point I'd just point out the exhibit where Judge Floyd Don Davis signed the arrest warrants against Stoney.

MR. TANG: I'm not sure that's properly admitted, your honor.

MS. PETERSON: It's already in the writ of habeas corpus.

THE COURT: She's got it attached to the petition, Paul.

I'll tell you how to speed this thing along: Offer the paperwork you have on the extradition, then they'll be in evidence and you can refer to anything you

want to.

MS. PETERSON: Fine, Judge.

THE COURT: What's the exhibit number?

THE CLERK: One.

THE COURT: On stipulation of counsel, State's 1 will be admitted in evidence.

BY MS. PETERSON:

Q Who is representing your wife on the divorce and child custody matters?

A Represented by a man named Ben Lynch.

Q Who's Ben Lynch?

A He's the county and city attorney for Franklin County, Tennessee.

His brother Mike Lynch, which is the prosecutor in my case, they work in the same office together. (sic).

Q Ben and Mike Lynch are law

partners?

A Right. Mike Lynch is the prosecutor and Ben is his brother, which represented by wife.

Q When you returned to Tennessee to deal with the divorce situation that was going on there, did you obtain an attorney?

A Yes, I did. But before I went to Tennessee I tried to hire attorneys in Florida and they wouldn't take the case because they said that there was no way they would a Tennessee court battle.

And so, you know, I was -- Tennessee didn't have any jurisdiction to issue the order for divorce in the first place, so I was trying to fight from Florida and I couldn't do it, so I had to go back to Tennessee.

And I consulted two or three attorneys; no one would take the case. I

finally fired an attorney Jerre Hood. He was the only guy that would take the case.

Q Okay. And could you tell us what happened the day of the divorce trial?

A The day the hearing was supposed to come up before Judge Hannah, which there were only two chancellors in that county that were hearing divorce cases, when we went to the hearing that morning there was a judge there named Tyrus Cobb, which I'd never seen the guy before. My attorney said he hadn't set on cases over there in years; didn't know why he was there.

And later on I found out that he was a close friend of Joe Bean's and they had had breakfast that morning in the cafe across the street from the courthouse.

And during the hearing I brought out that Tennessee had no jurisdiction to issue

the order and that Joe Bean was my attorney previously, and it was ignored by Chancellor Cobb.

Q Did you ever file disciplinary actions against Joe Bean with the State Bar of Tennessee?

A After the hearing had went on and the decree was handed down and everything, I filed charges against Mr. Bean with the State Bar Association, which they have since done an investigation. They said there was no doubt that he shouldn't have done what he had done, but he died before they could render their decision as to what they were going to do.

Q Okay. Go ahead and finish; what happened in court that day?

A Well, the court that day was a total joke. It was a mockery.

I went in and everything that I

told and all the evidence that I supplied, such as them not having jurisdiction and Mr. Bean was my attorney, the judge sat up there and ate popcorn and Candie and slept part of the time. (sic).

When the hearing was over he made no deliberation at all. He didn't say anything, he didn't take a recess, not even for a moment, he just handed down his decision as to what he was going to do.

Q What was his decision?

A He granted her full custody and gave me bi-weekly visitation.

Q Okay. Did you try to appeal that judgment of the court?

A Yes, I did. I tried to get my attorney Jerre Hood to appeal time and time again.

And he said: We can't appeal. He said: We can't appeal.

I said: Well, what can we do?

He said the only thing we can do is petition to modify, which I did.

Q Okay. And did you petition to modify?

A Yes, I did.

Q Okay. Tell us what happened with that?

A Well, at that time I petitioned to modify and my wife had gone and hired Ben Lynch to represent her at that time because the State Bar Association was conducting their investigation on Mr. Bean. And at that time I -- there was a not of abuse going on.

Q Abuse, what do you mean?

A Child abuse for my child. Every time I would get him he would have bruises over his entire body.

His toes were cut at one point,

and I asked him what happened to his toes. They were cut, the same type cut on each toe, real deep gashes. I asked him what happened and he said that Chris, which is Lonnie Taylor's mentally retarded son, held him down and cut him with a knife.

I took him to the doctor that day and the doctor, Alex Jones, said that the only way that the child could have been getting the type of bruises that he was getting was from being abused. And he said that he would testify to that effect in court.

Q Did you try to get anyone in Tennessee to look into the abuse of the child?

A Yes, I did. I contacted the Department of Human Services which they said that they would send some out, which they did. And the person they sent out was

Janice Clardy, which was a very young lady that had gone to high school with my wife. They were very close friends.

And upon her investigation she did not see the child. And while she was there doing the investigation, Lonnie Taylor came in and told her to leave and to never return again.

And that's exactly what she did.

Q This is the Department of Human Services Worker?

A Right, case worker, Janice Clardy.

Q Ever ask her to do any further investigation?

A Well, later on I found out that someone else had contacted the Department of Human Services and reported the abuse on my child. And when I found out that out, I

went down there and talked to Janice Clardy and I asked her what type of findings she found on her next investigation.

She said: Well, I didn't do any investigation.

I said: Why not?

And she said: As far as I'm concerned, the case is closed.

Q Did you contact anybody else to try to get help for your child?

A I wrote letters to Senator Jim Sasser, Senator Howard Baker, Congressman Albert Gore, Lamar Alexander, the Governor of Alabama; even wrote a letter to the President.

I contacted child abuse organizations, the Hank Snow Foundation, National Committee Against Child Abuse in Chicago. And all of these people I contacted referred me directly back to the

Department of Human Services.

And even if the Department of Human Services had found any type of abuse, it is my understanding that it would have been directed then to Mike Lynch, which is my wife's attorney's brother.

Q Okay. Stoney, since this thing happened in Arizona here, since you were picked up on the warrant, have you tried to get an attorney to represent you in Tennessee?

A Yes. And I cannot get anyone to represent me in Tennessee.

One attorney had worked on the case for a while and he finally quit. He said that life was just too short to practice law in Franklin County.

MS. PETERSON: I don't have any further questions, your honor.

THE COURT: Paul.

MR. TANG: Just a couple of questions.

CROSS-EXAMINATION

BY MR. TANG:

Q Sir, you did take your son out of Tennessee and bring him to Arizona?

A I took my child away from the people that were abusing him.

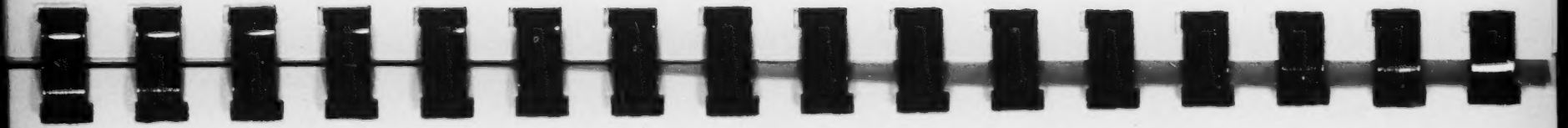
Q Okay. And Tennessee has charged you with kidnapping in that case?

A Yes. Tennessee has no jurisdiction to have the case in the first place.

Q And you are Stoney Golden; is that right?

A I'm Stoney Golden.

Q Tennessee is seeking to extradite you for those -- and for that charge of kidnapping; is that correct?



A Yes.

MR. TANG: I have nothing further.

MS. PETERSON: I have nothing further, your Honor.

THE COURT: All right, thank you, sir.

DEFENDANT GOLDEN: Thank you.

THE COURT: Call your next witness.

MS. PEDERSON: Judge, like to call Cindy Harrison Golden.

MR. TANG: Judge, Mr. Peasley is present. We can do that waiver thing, initial appearance.

MS. PETERSON: Fine with me.

THE COURT: Tell him to come in.

(Pause in present proceeding.)

THE COURT: All right, Lori, call your next witness.

MS. PETERSON: Yes, Judge, call Cindy Harrison Golden.

(Witness duly sworn.)

CINDY HARRISON GOLDEN,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PETERSON:

Q Cindy, would you please state your full name for the record?

A Cindy Harrison Golden.

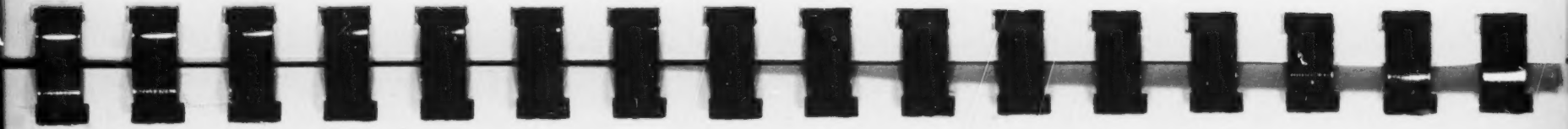
Q Would you move up a little so people can hear you?

A Cindy Harrison Golden.

Q What's your relationship to Rocky Golden?

A I'm married to Rocky Golden.

Q You're Stoney Golden's sister-in-law?



A That's correct.

Q Cindy, I have a couple of questions I'd like to ask you. First of all, you were involved in an incident in Indiana I believe when you were with Mr. and Mrs. Golden, Stoney's parents. Could you tell the Court about what happened in Dire, Indiana?

MR. TANG: Your Honor -- excuse me --just show my continuing objection.

THE COURT: All right, Paul. I want to get it done.

THE WITNESS: Okay, all right. I went to visit the Goldens and Mr. Golden's sister in Dire, Indiana. Okay. I was there approximately four or five days when they brought -- Dyer City Police brought three warrants to Mrs. Nolly Gee's (Ph). home. Okay. One was for myself, Mr. and Mrs. Golden. We were charged with

accessory to kidnapping.

Q Is this based on the kidnapping by Stoney Golden?

A That's correct.

Q Okay. And did the Dyer police arrest you?

A Yes, they arrested us and took us to Dryer City Police Station.

Q Okay. You testified that warrant charged you with accessory to kidnapping?

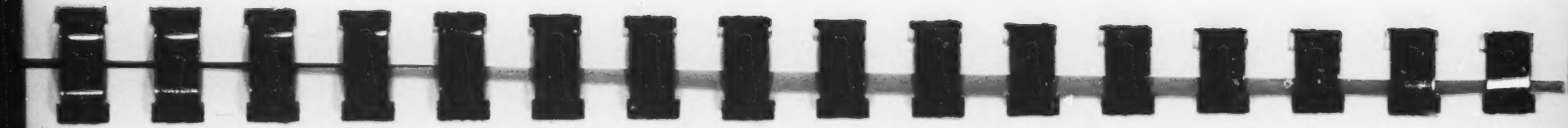
A That's correct.

Q When you got to the police station, tell us what happened?

A Okay. When we pulled into the police station we saw Candie and Lonnie Taylor's car sitting about in front of the station.

Q Candie is Stoney's ex wife?

A Right.



Okay, we went in and we had a seat. Okay. And in the other room -- Candie and Lonnie Taylor were in another room. And Detective Barnes was questioning them and talking to them.

Okay. In the meantime we had my mother Mary Harrison and Joe Clower (Ph.) to make our bond in Tennessee.

Okay. Detective Barnes came out of the room after talking to Candie and Lonnie Taylor --

Q Could I ask you, had they been the ones who brought the warrants from Tennessee?

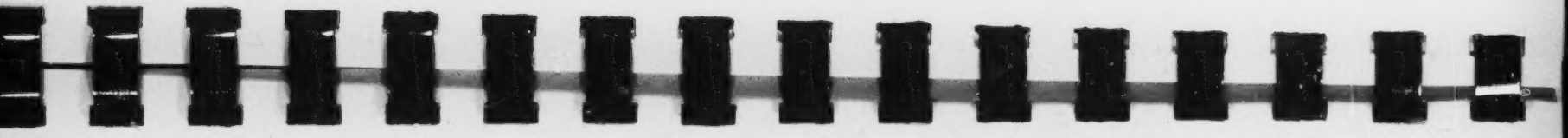
A Yes, yes, they were.

Q Are they law enforcement officials?

A No, they're not.

Q Go ahead.

A Okay. Detective Barnes came



out of the room after speaking with Candie and Lonnie. He was real mad and he was red in the face and he says: You people are free to go. He says: These papers -- these warrants aren't worth the paper they're written on. He says: I sent them on their way and told them they wasn't in the back woods of Tennessee and they could get out of Indiana. That's the exact words he said.

Okay. So we left there and went home. Okay. And they scheduled a preliminary hearing in Tennessee on February 23rd --

Q So you were still charged with accessory to kidnapping?

A Yes, 'cause they posted bond for us in Tennessee.

Q Okay.

A Okay. The preliminary hearing

was set for February 23rd, before Judge Davis, Floyd Davis. We went before Floyd Dan Davis and we hired Nelson Forrester of Tullahoma to represent us.

Okay. We went before him. We were questioned and --

Q Who were you questioned by?

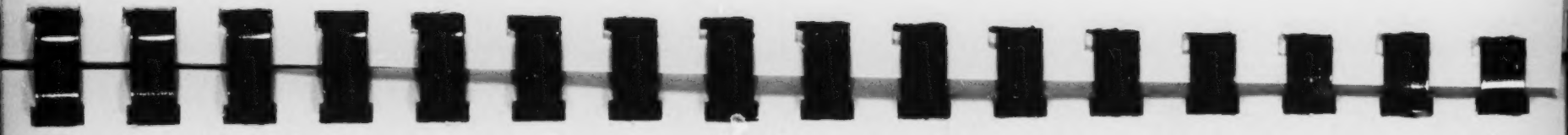
A The assistant DA, Mike Lynch.

Q Go ahead.

A He questioned us and everything and then they kept the warrants on Mrs. Golden and myself. And Mr. Golden -- the warrant on Mr. Golden was dropped, thrown out, whatever. Okay. They kept the warrants on me and Mrs. Golden. They said there was probable cause. Okay. And he bound us over to the grand jury.

Q Okay. Do you know a man by the name of Mike Kirk?

A Yes, I do.



Q Can you tell us who he is and what his capacity is in Franklin County?

A Okay. He's the Sheriff of Franklin County.

Q Okay. Could you tell the Court what Sheriff Kirk stated to your father-in-law regarding the safety of Stoney Golden?

A Okay. He stated that Stoney would not be safe in his jail, that he would have to carry him to and from his home in order for him to be safe but he wouldn't agree to do so.

Q He was not willing to --

A Yes.

Q -- take any measures to protect Stoney?

A That's correct.

MS. PETERSON: I have no further questions Judge.

THE COURT: Paul, do you have anything?

MR. TANG: I have no questions of the witness.

THE COURT: Thank you, ma'am.

Lori, do you have anything else?

MS. PETERSON: Judge, I think we just have one last witness who Kathleen McCarthy will call; be very short.

MS. McCARTHY: Debra Edler.

(Witness sworn.)

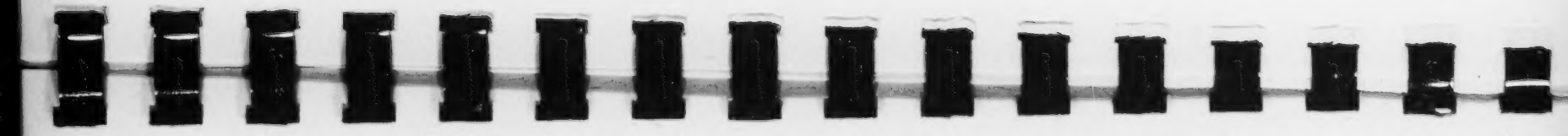
DEBRA EDLER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MRS. McCARTHY:

Q Would you state your name, please?



A My name is Debra Edler.

Q What is your employment?

A I am currently employed as a legal assistant in the law office of Kathleen McCarthy.

Q You're trained as a legal assistant and paralegal.

A I am trained as a legal assistant and paralegal.

Q As part of the job of legal assistant you were in charge of coordinating the details of the Stoney Golden case, the domestic action at my direction; is that correct?

A Under your supervision and direction, yes.

Q As part of your duties, it's one of your duties to take notes of every non-routine telephone conversation and incidents that take place in the office, is

that correct?

A I generally, as a matter of habit, do take notes and document my conversations both for my own reminders and for messages for you.

Q And did you at some point in May of 1985, have the occasion to talk to a Mr. Ed Prichett?

A I did.

Q Who is Ed Prichett?

A Ed Prichett is an attorney who is from Tennessee.

Q Was he hired by Mr. Stoney Golden to represent some of his interests in Tennessee during the pendency of the domestic action here?

A Yes.

Q Okay. Can you tell the Court about a telephone conversation that occurred with you and Mr. Prichett on May

14, 1985?

A Okay. On May 14, 1985, was the first time I did have a conversation with Mr. Prichett. We had gotten a date back on an OSC hearing and they had contacted Mr. Prichett to represent them on that and for that for service in particular.

I explained we had the date back. It was set very soon, it was for the following Friday. We had been -- we would be sending two sets of the OSC, both the petition and the order. They were to be served on Lonnie Taylor and Candie Golden who at that time we also believed was known as Candie Pennington.

I gave him a P. O. Box address on Cumberland Road, Route One, provided to me by the brother of Stoney, Rocky Golden.

I also informed him that we believed Candie was now working at a

Shonny's Restaurant on Wilson Avenue in Tullahoma. I gave him the telephone number of the restaurant, talked about the urgency in getting the papers served right away. He did know the hearing date was set for Friday.

He agreed with me, yes, he would get them served as soon as he received them.

I mailed them out that same day by Federal Express mail, and I sent a cover letter along with that documenting our whole telephone conversation. I also stressed in that time that he should contact our office if he ran into any problems with the service and we would need a notarized affidavit or return of service for filing with the court here once the service was made there.

Q Okay. When was your next

telephone conversation with Mr. Prichett?

A I had a telephone conversation with Mr. Prichett on the following day on Wednesday the 15th. At that time he said yes he had received the documents Federal Express and he planned to serve Lonnie Taylor that evening.

Q Okay. When was your next contact with him?

A The following day on Thursday the 16th, I had a telephone conversation with Mr. Prichett. He said that he had called the restaurant, gone down there found out that Candie Golden had taken the time off from work, was not expected back until Monday the 26th, so that he was unable to serve her.

But he was, however, able to serve Lonnie Taylor. He had gone down the Cumberland Road per our instructions, and

had been unable to find the address, so he returned to town. And I'm uncertain -- did not document what town but he returned to town and had a sheriff -- there again I do not know what sheriff -- had a sheriff telephone Mr. Taylor who --

Then Mr. Taylor came down to the sheriff's office. He had a boy with him, approximately age 12 or 13. He was not the child in question.

And Mr. Prichett then said he had the papers. He explained what they were for and the date. And at that time he said that Mr. Taylor laughed and said, well, he might as well throw them in the wastebasket.

Mr. Prichett told him, no, that he had to personally hand them to him and once Mr. Taylor had the papers, he could do whatever he felt best. So he did.

Mr. Prichett told me that he placed the papers in Mr. Taylor's hand and he, Mr. Taylor, in turn gave them to the boy and told them (sic) to throw them in the wastebasket.

Q What was your next telephone conversation with him?

A On Friday, May 17th, we were getting a little panicky around the office; hearing was scheduled for that afternoon.

We did not receive the affidavit in the overnight mail so I telephoned Mr. Prichett. I told him we'd not received the affidavit or the return of service. And at that point he told me there would not be one.

I asked him why and very tensely he said: I had a visit.

I did not understand what he said. I asked him, I said: I don't

understand what you said; asked him what he meant.

He said he had a visit from the DA and cut me off very quickly.

I in turn transferred the call to Ms. McCarthy; did not speak to him further.

Q Anything significant about his tone of voice as compared to the previous --

A Yeah. The tonal quality changed amazingly. All previous conversations with Mr. Prichett -- he had a very thick and heavy Tennessee accent. I had gone to school in Alabama. We joked quite a bit in covering the business end of it; still got in the fact he talked in such a southern accent. Jovial, friendly conversation. Very cooperative the whole time and really, yeah, we're going to do this.

On that particular day he was very tense and uptight and the tonal quality was just amazingly different. He cut me short.

Q Let me show what's been identified as Defendant's Exhibit A. Do these documents represent the correspondence in the Federal Express notations that you sent to Mr. Prichett?

A Yes, they do.

Q Subsequently we attempted to get service with a Mr. Cheatham; is that correct?

A That's correct.

Q Page one of Exhibit A represents the letter that we sent to Mr. Cheatman to affect sofar as Mr. Taylor --

A That's correct.

Q To the best of your knowledge did we send correspondence in the packet of

paperwork to have him served?

A Yes, we did for Mr. Taylor, not anybody else.

Q Did we ever receive service back on that?

A No, we did not.

MRS. McCARTHY: No further questions.

THE COURT: Anything, Paul?

MR. TANG: No further questions.

MS. McCARTHY: Move for the admission of Exhibit A.

THE COURT: A will be admitted.

MS. PETERSON: Judge, we have no further witnesses.

THE COURT: Thank you.

Anything Paul?

MR. TANG: Yeah, call Ricky Macey from our office.

THE COURT: Statute Section?

MS. PETERSON: 13-3845, I believe. 3845, yes.

(Witness duly sworn.)

RICKEY MACEY,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TANG:

Q Please state your name.

A Ricky Macey.

Q And what do you do, ma'am?

A I'm the extradition officer in the County Attorney's Office.

Q How long have you served as the extradition officer in the County Attorney's Office?

A Just over 12 years.

Q Basically will you describe to us your duties?

A When a warrant is issued in another state for somebody who leaves without permission of the state and they're located here in Pima County, they're brought to court and I prepare the necessary paperwork and follow that matter through to the time the governor's warrant arrives from another state and that person is served.

Q In the course of your duties have you become familiar with the case involving Stoney Gene Golden?

A Yes, I have.

Q Can you tell us briefly how you became involved with that case?

A Well, the first notice that I had was when a warrant was issued from Tennessee on a charge of kidnapping and Mr. Golden was arrested and brought to the Justice Court initial appearances. And I

believe bond was set. I'm not sure whether it was or not at this point but I think it was.

Q Was Stoney Golden then served with that warrant?

A To my knowledge he was.

Q Okay. I'm going to show you what's been marked State's No. 1 for identification.

THE COURT: In evidence.

THE WITNESSES: You're talking about the governor's warrant?

BY MR. TANG:

Q That's right. State's No. 1 has been admitted into evidence according to Judge Meehan.

A Yes. This is the governor's warrant.

Q And from what location is that governor's warrant?

A This is from the State of Tennessee.

Q Okay. Does the governor's warrant from the State of Tennessee allege a felony?

A Yes, it does.

Q And is that felony kidnapping?

A Yes, it is.

Q Is that for Stoney Gene Golden?

A Yes, it is.

Q All right. And have you examined that paperwork?

A Yes, I have.

Q And in examining that paperwork, does the paperwork seem like it's in order?

A Beg your pardon?

Q In examining that paperwork, does the paperwork seem like it's in order?

A Yes, it does. It appears to be.

Q Okay. And was a governor's warrant also served in this case on Mr. Golden?

A Yes, it was.

Q And did you have an opportunity to examine that paperwork?

A Yes, I did.

Q Was the paperwork from the governor's office also in proper order?

A Yes.

Q One last question, Ms. Macey: Does the document from Tennessee contain a photo as well as prima facie identification?

A Yes, it does.

THE COURT: It's a already admitted.

MR. TANG: I have nothing further.

THE COURT: Lori.

CROSS-EXAMINATION

BY MS. PETERSON:

Q Ma'am, did you also receive a copy of the supporting documents, the documents in support of the extradition?

A Yes, we usually do.

Q Okay. Was one of the documents that was sent as part of the supporting documents a copy of the divorce decree between Stoney Golden and Candie Golden?

A I'm not sure. I think it was. Yes, I think I remember seeing it.

Q Okay. Do you remember whether or not the warrant, the arrest warrant which was sent as part of the supporting documents, was signed by a man by the name of Judge Floyd Don Davis?

A Yes, I think it was.

Q And as part of the documents that were served on Stoney Golden, the governor's warrant, is it -- does it direct

that Stoney be turned over to the custody of Sheriff Mike Kirk?

A Uh-huh, yes it does.

MS. PETERSON: I have no further questions.

MR. TANG: No, nothing on redirect, Judge.

THE COURT: Thanks.

MR. TANG: I have no further witnesses, your Honor.

THE COURT: Well, you want to stipulate there is a governor's warrant from the Governor of the State of Arizona in compliance with State's Exhibit A?

MS. PETERSON: In compliance with State's Exhibit A?

THE COURT: Well, to support State's Exhibit A.

MS. PETERSON: Yes, I'll stipulate to that.

MR. TANG: Yeah.

THE COURT: Okay.

MS. PETERSON: Judge, I know you've read the warrant -- I'm sorry -- the writ, so I'm not going to go over it line by line or anything like that. But I think that I would like to point out the reason for the hearing today, which is that the situation in Tennessee, the law back in Tennessee is simply corrupt.

The judge who signs the warrant against Stoney is his ex-wife's former attorney; the district attorney prosecuting Stoney is his brother, is currently representing his ex-wife.

I've stated in my memorandum in support of the writ of habeas corpus case law which says that, for example, whenever an arrest warrant or search warrant is issued, the person issuing it must be a

neutral and detached magistrate.

I think that we are not challenging probable cause. We do not know whether or not the judge had probable cause to issue the warrant. We're not trying to challenge that.

What we're trying to say is that the warrant is simply unlawful and it cannot be honored because the judge was not a neutral and detached magistrate.

And I cited the Supreme Court case of Connally versus Georgia which says that one who has a direct or personal interest in a case does not qualify as a neutral and detached magistrate. And I've also cited the case of Wong Sun versus United States saying that an invalid warrant simply cannot be honored.

And this warrant is invalid for the reason I've just stated.

Some of the cases cited in the County Attorney's response to my writ seem to bolster the defense's position here. One case that is cited is Applications of Oppenheimer which states that a fugitive must be turned over if there is a valid warrant. I think the clear implication of that is if there is not a valid warrant based on the facts I've just given you, then the fugitive need not be turned over and that is up to the discretion of the trial court.

There's case law that says in Arizona, Montgomery versus Blubaum which is 26 Arizona Appeals page 146, that you don't have to look beyond the documentary assertions of the demanding state to see if there was bad faith. That means the court doesn't have to, the clear implication being that if the court chooses to, he can

look beyond the documentary assertions in the demanding state's warrant and see if there is bad faith.

Again, you don't have to but if you choose to, you do have that power.

And again, Judge, we are not trying to contest the innocence or guilt at this hearing of Stoney Golden. What we're contesting are other matters such as I already raised: Conflict of interest back there and the fact that the State of Tennessee had no jurisdiction whatsoever to render a divorce decree when the woman had lived there for one day after going to --

THE COURT: This isn't the proper place to litigate that and I don't intend to litigate it.

MS. PETERSON: Well, Judge, I think jurisdiction can be brought up at any point and --

THE COURT: Well, the jurisdiction of the validity of the divorce decree, as far as I know, can't be brought up in application for writ of habeas corpus to release somebody from custody based on a governor's warrant issued by the State of Arizona.

MS. PETERSON: Judge, I think it can be because one of the things they have to show substantial proof that a crime was committed.

When you've got as part of the supporting documents sent by Tennessee they send a copy of the divorce decree, when they're saying that there is a divorce and the reason that he had no right to the custody of the child is because of the divorce and the divorce is utterly invalid, then there's no reason to believe that they had jurisdiction, therefore, a crime was

not committed.

THE COURT: You don't litigate that issue here --

MS. PETERSON: Okay.

THE COURT: -- in my opinion.

You know, Lori, speed this thing along, I've heard the testimony from your client, his sister and Kathy's. I'm not going to argue with you one way or another about what they say happened back there.

But, you know, it's one side of it. I'm sure there's another side just like everything else.

All I know is I have the proper documentation in front of me from the State of Tennessee to support the issuance of an (sic) government's warrant by the State of Arizona.

You have stipulated there is a

governor's warrant issued by Governor Babbitt based on the -- what I feel is valid documentation as required by the statute by the requesting state, the State of Tennessee.

And the identity of the defendant's been admitted to right off the witness stand, so there's no question he's the person that Tennessee is requesting.

There's no question that probable cause has been set forth by reason of the grand jury indictment to support the issuance of an warrant.

There may be all the conflicts that you talk about. But in my opinion, the requirements of the statute have been met. There is a valid governor's warrant to extradite this man to the State of Tennessee issued by Governor Babbitt. And once I make that determination, you know,

those three things are met, identity of the defendant, the probable cause, the proper affidavits and the paperwork having been filed, I perform a routine administrative duty, and that's all I do.

So show the application for writ of habeas corpus is denied.

MS. PETERSON: In that case, your Honor, if I could ask you to do one other thing: First of all, we would like to file a notice of appeal and we would like the Court to grant a stay of the execution.

THE COURT: You don't appeal this, Lori. All you do is file a special action and ask for a stay.

MS. PETERSON: Will you grant us a stay?

THE COURT: You can get it done today. All you've got to do is walk over

with the petition. If they feel a stay is appropriate, they'll issue it.

MS. PETERSON: Okay. Judge, I'd ask for one further thing, that is that if you would be willing to grant a stay, I had already had contact with Bob Corbin, the attorney general, who would be willing to do an investigation into this case if you were to make a court order -- --

THE COURT: Lori, I read with interest that in the paper. I am sure the attorney general of this state was not serious when he meant that he would send investigators to the State of Tennessee to determine whether or not their legal system is corrupt. I don't have any authority to order him to do that anyway and I decline to do so.

C E R T I F I C A T E

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I, Kathryn S. Anderson, do hereby certify that as an Official Court Reporter for Pima County, I was present at the foregoing proceedings; that while there I took down in stenographic shorthand all the oral testimony adduced and the proceedings had; that my stenographic shorthand notes were transcribed by me: and that the foregoing pages contain a full, true and correct transcript of the matter as set forth in the title page hereto.

/s/ Kathryn S. Anderson
KATHRYN S. ANDERSON, RPR
Official Court Reporter